

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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COMMON CAUSE NEW YORK et. al.

Plaintiffs,

-against-

16-CV-6122 (NGG) (RML)

BOARD OF ELECTIONS IN THE CITY OF
NEW YORK, et. al.,

Defendants.

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**REPORT OF THE DEFENDENTS,
THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK, ET. AL.,
PURSUANT TO PARAGRAPH 39 OF THE CONSENT JUDGEMENT AND
DECREE DATED OCTOBER 31, 2017
AND THE
ORDER ENTERED ON DECEMBER 14, 2017
BY THE HON. NICHOLAS G. GARAUFIS,
UNITED STATES DISTRICT JUDGE**

MARCH 1, 2019

To the United States District Court for the Eastern District of New York:

Pursuant to Paragraph 39 of the Consent Judgment and Decree dated October 31, 2019 and the Order entered on December 14, 2017 by the Hon. Nicholas G. Garaufis, United States District Judge in the matter set forth in the caption above, the Defendants, The Board of Elections in the City of New York, its Commissioners in their official capacities and Michael J. Ryan in his official capacity as Executive Director of the Board of Elections in the City of New York, respectfully submits this report and its attachments reflecting activity for calendar year 2018 outlining the Board's efforts to implement the provisions and requirements of this Consent Judgment and Decree.

BACKGROUND

The Board of Elections in the City of New York (hereinafter "Board"), undertook corrective and remedial actions relating to the removal of voters in a manner inconsistent with the relevant statutory provisions of the National Voter Registration Act of 1993 (NVRA) [52 USC §20507] and related New York State Election Law provisions [Article 5], from the list of registered voters in the City of New York during a period preceding the April 2016 Presidential Primary Election, immediately upon its being made aware of this problem and prior to the commencement of the instant proceeding.

Since the commencement of this proceeding in November 2016, the Board has diligently worked in a cooperative and productive manner with the U.S. Department of Justice, particularly the Voting Section of its Civil Rights Division, the Civil Rights Unit of the U.S. Attorney's Office for the Eastern District of New York, the Civil Rights Bureau of the New York State Department of Law (the Attorney General's Office) as well as counsels for the remaining plaintiffs to develop and implement remedial measures to ensure accurate and effective voter registration and list maintenance processes. The Board's efforts are more fully detailed within this Report.

As the Board has completed the documentation for and implementation of the Comprehensive Remedial Plan, it has been guided by the shared goals of: (1) ensuring that New York City's voters are only removed from the official list of registered voters squarely within the procedural safeguards set forth in the NVRA and State Election Law, and (2) improving the accuracy of voter registration records through a program that makes reasonable efforts to remove the names of ineligible voters from the official list of registered voters.

The most fundamental change has been a redesign of the Board's voter registration processing system known as AVID [Archival for Voter Images and Data]. As set forth more fully below, the Board has built upon its existing voter registration processing system by making numerous technological and systems changes designed to prevent errors and to more clearly and transparently report

on each voter registration transaction. The Board has undertaken these changes following extensive internal discussions and in consultation with the U.S. Department of Justice, the NYS Attorney General's Office and the New York State Board of Elections. System improvement remains a dynamic effort. The process has reinforced that maintaining the voter registration and list maintenance processes requires ongoing analysis and modifications to enable the Board to meet its statutory obligations. The Board must continue to assess and modify the process to meet the requirements of any enacted legislative changes (which are discussed in the next paragraph).

These comprehensive efforts have been taking place at a time of significant changes for the system of electoral administration in the State of New York. Since January of this year), the New York State Legislature has enacted major modifications to the State's statutory scheme for the conduct of elections, the processing of certain voter registration records and enhancing the voter's ability to participate the voting process. Additional changes are under active consideration and debate. It is expected that further legislative changes will be adopted in the near future. As such, there will be significant changes to the manner in which the Board performs its statutory duties and responsibilities (same are more fully outlined below).

Since the spring of 2016, the Board has redoubled its effort and commitment to keeping and maintaining accurate voter registration and list maintenance

processes. The Board is working cooperatively with governmental partners and counsels in this proceeding. The foundation of the list maintenance process under NVRA rests on the information provided to boards of elections from the United States Postal Service (USPS). The quality and consistency of the information received from the USPS is sporadically reliable. The notations on returned mail are made via a manual process; subject to judgment and determination of individual postal workers. The Board has been advised that the postal workers sort returned mail pursuant to internal USPS guidelines. When the Board has informed USPS management of inconsistent labeling messages, the response was “it’s up to the individual postal worker.” The Board finds the USPS process to be troubling at best and potentially disenfranchising at worst.

The Board will continue to effectuate the needed modifications and improvements to provide the voters of the City of New York with a voter registration process that is fully compliant with all the applicable federal and state statutory and regulatory requirements. This will enable the Board to effectively and efficiently meet all obligations pertaining thereto. While the task is not complete and will require ongoing attention and adjustment, the Board notes substantial, significant efforts have been made and it is documented for the information and consideration of the Court in this Report. The Board is committed to continue those efforts in the same spirit of cooperation with all of those who share in seeking to achieve the objectives outlined herein.

TABLE OF EXHIBITS:

Exhibit 1 – Draft – List Maintenance Remedial Action Plan Internal Issues

Exhibit 2 – Draft – List Maintenance Remedial Action Plan External Issues –
NYSVoter/AVID Interface

Exhibit 3 – Consent Decree Yearly Extract

Exhibit 4 – AVID Enhancements Presentation

Exhibit 5 – 2019-2020 Amendments and Additions to New York State Election
Law

Exhibit 6 – 2019-2020 Proposed Amendments and Additions to New York State
Election Law